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Current Topics.

The late Sir Walter Schwabe.

TO HIS many friends the announcement of the death of this distinguished silk must have come as a painful shock, for he was still a young man with the hope of many years of active work before him. With legal blood in his veins—he was a grandson of that very great lawyer Lord Justice JAMES, and was related to that brilliant advocate and genial personality, Sir FRANK LOCKWOOD—and trained in the chambers of the present MARQUIS OF READING, he had obvious opportunities of making speedy headway in the profession, opportunities of which he took full advantage. Making a special study of Stock Exchange law, he collaborated with the present Mr. Justice BRANSON in the writing of a treatise on the subject which became the guide, philosopher, and friend of all those who seek to understand the mysteries of contangoes, backwardations and all the other proceedings with strange names under which transactions on the Stock Exchange are carried out, following it up by an equally useful work on "The Effect of War on the Stock Exchange." He appeared in many cases in which the knowledge he possessed of Stock Exchange law stood him in good stead. A very important litigation in which he was briefed for the Crown was that in which the question involved was, upon what terms were the telephones to be taken over by the Post Office? In this he displayed marked ability. Then came the war, with all its disorganising consequences to him as to many other leaders of the Bar, and this, it may be, induced him in 1921 to accept the Chief Justiceship of Madras, which he held for a few years, till reasons of health led him to resign and return to practise at the Bar, following, in this, the example of several who have held judicial office in India. Gradually work came back to him and he had appeared in a considerable number of cases when now have come "the abhorred shears" and slit "the thin-spun life." Like many another lawyer, Sir WALTER found relaxation from the dusty purlieus of the courts in fishing, spending part of each long vacation in Norway in pursuit of this recreation.

Gretna Green Marriages.

THIRTY YEARS ago, before the days of universal motoring, a Gretna Green marriage was a matter of legend and romance. When the car came into fashion, however, and English people in their tens of thousands entered Scotland by road instead of railway, the shrewd inhabitants of the place, situate on one of the three main roads as it is, were not slow to note their advantage. Accordingly, those who pass the ancient smithy have no possible chance of missing its claims to fame, blared on innumerable placards, and they also learn that marriages can still be solemnised there. The result, notwithstanding Lord Brougham's Act of 1856, appears to be that a number of undisciplined young couples, whose parents object to their immature unions, proceed by car to Gretna, and tell the so-called "priest" there that one of them is usually resident in Scotland, whereupon he performs the ceremony of marriage for them, for which he pockets a fee. So long as irresponsible persons are allowed by the law of Scotland to take the uncorroborated word of these young people on the matter, the scandal will continue, and the mischief is worse than that of the old days, for then at least the girl was validly married, and not compromised or smirched by a bogus ceremony. The obvious remedy would be to require production of a statutory declaration as to the Scottish residence, printed on a special form, and to be signed by a judge or provost or some other responsible Scottish official, preferably also with photograph attached, like a passport. Any omission or carelessness on the part of the celebrant of a marriage in respect of this requirement should be visited by heavy penalty, including his interdiction from further celebrations, and, possibly, a veto on the premises being so used. It is not for us to criticise our neighbour's law, but it is understood that there is a growing body of opinion across the border against the continued toleration and recognition of irregular marriages. Those who read *Steuart* v. *Robertson* (1867), 2 Sc. & D. 494, may agree that both the law and custom of Scotland in this respect leave much to be desired. Lord SELBORNE's comments on the law, which may leave the validity of a marriage dependent on the progress of events, will be found on p. 534. But, as he observed, the continuance of such a state of things was a matter for the legislature, and still appears to remain so.

Shopkeepers' Touts.

THE *Morning Post* of 24th April, dealing with "the growing habit of certain shopkeepers to tout for customers among passers-by," suggests that the attitude of the London police is that "the onus of proving molestation rests with the unfortunate victim, and that nothing can be done unless a summons is applied for." The same issue of that paper describes the state of affairs in Berwick-street, W., which, according to the writer, is an outstanding example of the nuisance. Touts intercept women and girls, and almost force them into their shops. "Inquiries at the local police station," goes on the article, "elicited the fact that the practice was well-known, and the police did all they could to put it down, but they could not interfere unless they saw molestation taking place. Otherwise it was 'up to' the person molested to apply for a summons." The nuisance is not confined to Berwick-street, and unless it is checked it will certainly grow. We cannot vouch for the attitude of the police or for what they may say about it. What we do know, however, and what has appeared from police court reports in the press, is that in the past, at all events, the police have themselves taken action over and over again, in Berwick-street

and elsewhere, and have secured convictions. The word "molestation" is not quite the best to employ, though it describes the course of conduct well enough; the offence alleged has always been obstruction of the highway, and this could easily be proved by a police officer keeping watch who sees people handled, stopped, perhaps compelled to go into the roadway to avoid the unwelcome attentions of the tout. In these, as in other cases, witnesses from the general public materially strengthen a police case; but they are by no means essential to a successful prosecution. We should be slow to believe that the police feel powerless to check this intolerable nuisance; even without a specific complaint by a person affected, who is willing to give evidence, a constable could prove obstruction, which, not involving a state of mind, is so much easier to prove than annoyance.

Sub-letting Furnished Rooms.

THE CONSIDERED judgments of the Court of Appeal in *Fordree* v. *Barrell* (*The Times*, 28th April), show that a statutory tenant who sub-lets part of the premises furnished cannot resist a claim for possession limited to the part sub-let. The tenant is unable to claim the protection of the second proviso to s. 12 (2) of the 1920 Act, which declares that the application of the statute is not excluded by reason only that part of the premises is used for business, etc., purposes, and is caught by the first proviso, which de-controlled furnished lettings. In our "Landlord and Tenant Notebook" of 20th December last (74 SOL. J. 844), we suggested that this was the true position, and pointed out that there was nothing to prevent orders being made to recover part of the premises. At the same time, the value of the decision may be merely academic in many cases: apart from the difficulty of proving a sub-tenancy when the tenant asserts that it is a case of lodgers, it may be difficult for the landlord to know what to do with the part recovered. The statutory tenant, it must be remembered, will not only be entitled to a reduction of rent by way of apportionment, but will also normally be in a position to make the life of any new tenant of the rooms recovered miserable. But in cases in which the statutory tenant has sub-let a considerable portion of the premises furnished and is living on the proceeds, the loss of the furnished part may lead to his departure.

Sale of Sweepstake Tickets.

WE ARE not surprised that the Court of Appeal, following the decision of the Divisional Court, has held that the sale of tickets in this country in a lottery authorised by the Irish Free State is illegal. The case resulted from the refusal of the Registrar of Companies to register a company—to be called the Irish Hospitals Sweeps, Limited—whose main object was to sell and deal in tickets in such lottery, on the ground that its object was not lawful. The matter depended on the construction of one sentence in s. 41 of the Lotteries Act, 1823, which prohibited the sale of tickets in any lottery "except such as are or shall be authorised by this or some other Act of Parliament." In his judgment in the Divisional Court the Lord Chief Justice disposed of the matter in very few words by holding that the words "by this or some other Act of Parliament" were not the same as "by Act of this or some other Parliament." Expressing the view in other words, and almost equally briefly, Lord Justice SCRUTTON said that the only Act of Parliament which could possibly be supposed to authorise the selling of tickets in England was an Irish Act. "It seems to me," he said, "that the answer is that the Irish Parliament has no jurisdiction, the Act of the Irish Parliament cannot authorise the sale of lottery tickets in England—that seems to me all that there is in it." Counsel for the appellant submitted that "Act of Parliament" in s. 41 of the Act of 1823 must mean an Act of that Parliament which was the legislative authority for that part of the United Kingdom within which the lottery was authorised. He traced in detail the history and effects of the Lottery Acts with a view to establishing (1) that the object of the Lottery Acts as a whole was to suppress private lotteries, in order to protect citizens from the frauds which were practised in connexion therewith; (2) that the broad distinction drawn by the legislature was between public and private lotteries, and that it was only against private lotteries that the legislation was directed; and (3) that the legislature used the terms "not authorised or established or permitted or allowed" by Act of Parliament as synonymous with private, unlawful and illegal lotteries, and that in the eighteenth century the legislature expressly declared the words "not authorised" or the synonymous words "established, permitted or allowed" to mean not authorised by an Act of either of the two Parliaments, the Irish Parliament in Dublin, and the Parliament of Great Britain in London. The Irish Parliament, said counsel, could authorise the lottery in question, and it was not under the Act of 1823, and never had been under any Act in this country, an offence to sell tickets in a *public* lottery authorised by Act of Parliament, whether of the Irish or the English Parliament. Against these almost convincing arguments, however, was put the apparently insuperable one that to hold that the sale of tickets in this country in a lottery authorised by the Irish Free State was legal, would be tantamount to acknowledging that the Irish Parliament had power to legislate for this country—a manifestly unsound proposition. For, as Lord Justice SCRUTTON said, that was outside the Irish Parliament's jurisdiction. It certainly seems difficult to appreciate how any other decision could possibly be arrived at; an illegality in this country can never be legalised by any Parliament other than our own. In passing, it is interesting to observe that on the 21st April, the day following the Court of Appeal's decision, a bank official, summoned under the Act of 1823 for selling a sweepstake ticket, was only fined one shilling, the Leed's stipendiary magistrate expressing the view that the offence was a very trivial one.

Railways and Traffic Commissioners.

AT LEWES on the 15th April, the point was taken before the Traffic Commissioners for the South-Eastern area that railway companies were not entitled to be heard in opposition to applications for road service licences. The point seems to us to be unsound. The Commissioners, in granting or refusing road service licences, are by s. 72 of the Road Traffic Act, 1930, to have regard *inter alia* to "the extent to which the proposed service is necessary or desirable in the public interest"; "the needs of the area as a whole in relation to traffic (including the provision of adequate, suitable and efficient services, the elimination of unnecessary services and the provision of unremunerative services) and the co-ordination of all forms of passenger transport, *including transport by rail.*" The Commissioners must "take into consideration any representations which may be made by persons who are already providing transport facilities along or near to the routes or any part thereof." Further, "where desirable in the public interest, the fares shall be so fixed as to prevent wasteful competition with alternative forms of transport, if any, along the route or any part thereof, or in proximity thereto;" again, persons "interested in or affected by the application" may make representations to the Commissioners as to the fares to be fixed. We hold no brief for the railway companies, whose sufferings are largely due to their own fault, nor must they be allowed too large a voice, but how it is possible to co-ordinate all forms of passenger transport without listening to them it is difficult to see. They certainly in many cases provide transport facilities near road routes; they equally certainly offer alternative means of transport as to which it is desirable to prevent wasteful competition. In fact, the suggestion that road transport must be considered without regard to the railways is not only pernicious, but is directly contrary to the policy of the law as very definitely expressed in Pt. IV of the Road Traffic Act, 1930.

Criminal Law and Practice.

NOTORIOUS PRISONERS.—Edward Guerin, who is widely known as "the man who escaped from Devil's Island" (in fact, he escaped from the mainland while in the French penal settlement in Guiana), was sentenced a few days ago at the Central Criminal Court to three years' penal servitude. In the course of the trial, Sir Percival Clarke referred to the fact that, when arrested, Guerin, who was of course well known, was given by the police the option of being charged in some other name.

This was, as Sir Percival said, a very fair course on the part of the police; for we think there must be very few people who could say, like the Common Serjeant: "Speaking for myself, I remember years ago hearing of a man named Guerin, who escaped from Devil's Island, but I no more knew it was this man than flying until we were told." We think most jurors who heard the name would immediately wonder about it, if they did not assume that this was indeed the man with the criminal record.

Guerin seems to have preferred not to conceal his identity. Perhaps he thought a jury might look with compassion upon a man, now over seventy years of age, who had experienced some of the horrors of French Guiana.

For our own part, we see no reason why a person should not, if he choose to do so, refuse to give his name and address or give, for the purposes of his trial, a fictitious name. Perhaps, as a matter of strict honesty, he ought to tell the police that the name he gives is only a label adopted temporarily; and, of course, he takes certain consequences if he refuse all information about himself. He cannot, for instance, expect to be released on bail.

Naturally, if the identity of the prisoner with a person of a certain name became an issue in the case, the giving of a false name might have to be proved against the prisoner, and might even tell unduly against him: but in most criminal trials the name of the accused is quite irrelevant. Nor, indeed, is it incumbent in most cases for the accused to give any account of himself, and his failure to do so should not be the subject of comment except upon such a question as the granting of bail. Where character, or giving an account of himself, enters into the proof of the charge, of course the position is different.

It is thus quite possible for a notorious man to receive a fair trial. Eddie Guerin, charged as William Jones or Henry Robinson, might remain quite unknown to the jury until after verdict.

SUPPRESSION OF NAMES.—Courts are not infrequently asked to allow the name of a prosecutor or a witness to be kept secret. In the case of blackmail, the judges have acceded to such requests on the ground that only by this means can people be induced to take proceedings against a class of offender who ought to be prosecuted with the utmost rigour. Apart from these cases, however, secrecy is rarely allowed, it being thought that publicity is one of the safeguards of legal proceedings, and entirely in the interests of justice.

A correspondent in *The Times* last week made the suggestion that greater fairness in criminal trials would be secured if the name of an accused person were not published unless and until he had been convicted, the only exceptions being where the supression of a name could be definitely proved to be against the public interest.

This would, of course, protect the notorious criminal from possible prejudice and would prevent the publication of the name of a person proved to have been wrongly accused. Thus the proposal seems attractive. We do not, however, expect it to find general favour. We fancy the prevailing opinion is that it is well that the public should know who is charged by whom and before whom. Truth sometimes emerges largely through publicity, and complete publicity may be less damaging to innocent people than rumour and innuendo.

Observations on Part I of the Housing Act, 1930.

(By H. A. HILL.)

(*Continued from p.* 226.)

THE LOCAL INQUIRY.

THE local inquiry into a clearance or compulsory purchase order is conducted, on behalf of the Minister, by an inspector on the staff of the Ministry. The local authority open the case and call their witnesses; these are usually the medical officer of health, the surveyor or housing official, and the chairman of the housing committee.

The medical officer of health speaks of the housing conditions in the area generally and of the insanitary condition of individual houses. He testifies that the houses and buildings coloured pink on the map are either unfit for human habitation or dangerous or injurious to health. Owners or their representatives then have an opportunity of cross-examining the medical officer upon his statements. As a rule he is well armed with a list of defects of the properties in the area.

The chairman of the housing committee, when called, usually deals with the policy of the council in regard to the clearance of unhealthy areas and the re-housing of the displaced persons. If the policy of the council is challenged questions should certainly be put on this point to the chairman of the housing committee and not to the officials of the council. Generally, the local authority cause a shorthand note of the proceedings to be taken, and a copy of this note may or may not be supplied to the inspector. Owners or their representatives should ensure that any point to which they attach importance is noted by the inspector personally.

It frequently happens at local inquiries of this kind that each owner in pursuing his own interests unconsciously endangers the case of a fellow property-owner. There is little to be gained as a rule by property-owners claiming that their particular property is the best in the area or seeking to gain admissions that someone else's property is worse than theirs. On the contrary, much is to be achieved by property-owners in the same predicament, mutually co-operating to save their respective properties by adopting where possible a common line of action.

Sometimes the question arises of employing a medical witness to give evidence in support of an owner's case. There is much to be said for this, but on the other hand a chartered surveyor or architect is well qualified to speak as to the conditions of the property in the area—perhaps even more so than a medical man. On this point, it is noteworthy that the inspector, himself, is never a medical officer, but a chartered architect, surveyor, or civil engineer. It is absolutely futile to put the condition of the property too high in evidence, for the inspector will visit it himself and make his own observations. Many of the defects mentioned by the medical officer will, in all probability, not be fundamental defects but such as could be cured at an outlay of a few pounds.

It is important to concentrate on the more serious defects in the property such as dampness, absence of W.C.'s, sinks, through ventilation, inadequate windows, etc. Where considerable sums of money have been spent recently in maintaining or reconstructing the property, evidence should be offered on this point. Anyone who has inspected areas of the kind likely to be declared clearance areas, will know the extent to which the tenants can contribute to one's impression of the property. The tenants should be encouraged to straighten up their houses and sweep the yards and cleanse the sanitary conveniences before the official inspection of the area.

A house structurally sound and in a state of reasonable decorative repair can be made to look in a very sorry state through the untidy and even dirty habits of the tenants. On the other hand it must be pointed out that the Ministry of

Health inspectors have had a very wide experience of their work, and it is unlikely that they will be unduly influenced by these superficial matters.

COMPENSATION.

Practitioners called upon to act in the matter of the assessment of compensation for land acquired compulsorily under Part I of the Act are recommended to read not only the provisions on the Housing Acts, 1925 and 1930, relating to compensation, but also those provisions of the Lands Clauses Acts which are incorporated in the compulsory purchase order.

The real difficulty in regard to the assessment of compensation arises in respect of pink land included in an area which is to be used wholly or in part for re-housing.

The manner in which compensation is to be assessed in such circumstances is set out in s. 46 of the Housing Act, 1925, as modified by the 1930 Act. Assume a case in which the order authorises the compulsory purchase of the whole of the land in an area, and that such land is to be wholly appropriated for re-housing, then the method of arriving at the amount of compensation for any particular piece of land in the area would be as follows: first, the value of the whole of the land in the area must be ascertained as if it were a cleared site available for development in accordance with the building bye-laws for the time being in force in the district. Next, the value of the whole of the land must be ascertained as a cleared site, subject to the requirements by the compulsory purchase order as to the provisions to be made for the re-housing of persons of the working classes on the land. It is difficult to imagine a hypothetical purchaser who would make an offer at all for the land if he were told that the only use to which he could put the land would be to re-house displaced slum tenants who could not pay economic rents. Surely a prospective buyer would want to know precisely what the term "re-housing" meant, and the exact nature of the restriction it would impose on the user of the land. The fact, however, remains that the section has been made to work in the past apparently without giving rise to any awkward questions, but I have yet to meet the surveyor who can confidently say how this second valuation ought to be made. Having arrived at the second valuation, the amount must be deducted from the amount of the first valuation in order to ascertain the difference between the two.

Suppose the site value to be £10,000 and the restricted value £6,000, the difference will be £4,000. By dividing £4,000 by £10,000 we arrive at the "reduction factor," namely, two-fifths. Taking one of the properties in the area the site value of which is £200, this figure must then be reduced by two-fifths, which gives the amount of compensation payable as £200 – £80 = £120.

Turning now to the *grey* land, compensation for which is generally supposed to be on a basis more generous than that conceded for pink land. Attention is drawn to the provisions contained in Part II of the Third Schedule to the 1930 Act.

By para. 2 of this schedule it is provided that if an arbitrator is satisfied that any premises are in a state of defective sanitation, or are not in reasonably good repair, the compensation shall be the estimated value of the premises if put into a sanitary condition, or reasonably good repair, less the estimated expense of putting them into such condition of repair.

It is thought that this provision may operate in some cases to make the amount of compensation payable actually less than that which would have been payable if the land had been included in the area and coloured pink. It may not always be advantageous to press for premises to be coloured grey instead of pink, especially where their condition is old and defective, though still fit for human habitation.

(*Concluded.*)

Mr. G. M. FEARNLEY, solicitor, Ben Rhydding, has been appointed Assistant Solicitor in the office of the Town Clerk of Manchester.

Poisons from Automatic Machines.

THE decision of the Divisional Court (TALBOT and FINLAY, JJ.) in the case of *Council of the Pharmaceutical Society* v. *Watkinson*, on 24th April, is of exceptional interest and importance for two reasons. One is that it undermines the entire practice followed by the Pharmaceutical Society in prosecuting *unqualified* vendors of poisons since the well-known judgment of HAWKINS, J., in *Pharmaceutical Society* v. *Wheeldon* (1890), 24 Q.B.D. 683. The other is that at the moment of writing a Pharmacy and Poisons Bill has just passed through committee stage in the House of Lords, some of the provisions of which will, no doubt, have to be considered afresh when the measure reaches the House of Commons.

The case before the Divisional Court came up on appeal from a decision of Judge CRAWFORD at Wood Green County Court, in which the Pharmaceutical Society claimed a penalty against the respondent Watkinson (a qualified chemist) for having sold lysol (a dangerous poison) through an automatic machine placed outside his shop. Holding that this was an infringement of s. 3 (1) of the Poisons and Pharmacy Act, 1908, his honour gave judgment for the plaintiff society for the penalty claimed. The sub-section reads as follows:—

> "Any person who, being a duly registered pharmaceutical chemist or chemist and druggist, carries on the business of pharmaceutical chemist or chemist and druggist shall, unless in every premises where the business is carried on the business is *bona fide* conducted by himself, or some other duly registered pharmaceutical chemist or chemist and druggist, as the case may be, and unless the name and certificate of qualification of the person by whom the business is so conducted in any premises is conspicuously exhibited in the premises, be guilty of an offence under section fifteen of the Pharmacy Act, 1868."

From this the defendant appealed and TALBOT, J., giving judgment allowing the appeal, said that the sub-section under review was intended to provide that a qualified person who did not give immediate supervision to the sales of his business might be guilty of an offence under the Act of 1868, just as if he had been an unqualified person. He was required "*bona fide* to conduct the business by himself or by some other duly registered chemist." That meant that at every place where the business of a chemist was carried on, there should be a duly qualified registered person personally conducting that business. It was not directed to the manner in which the business was to be conducted; what it was directed to was ensuring that the business was conducted personally by a duly qualified and registered person. It had been argued for the respondent society that the machine constituted "separate premises" so as to come within the words of the sub-section "other premises where the business is carried on." That would be inconsistent with the finding of the county court judge that the machine formed "part of the premises" at which this chemist's business was carried on. The strongest argument would be that the machine was "left to its own devices," but that was a fallacy. The business conducted through the machine was conducted by the defendant. To say that the machine was conducting the business was metaphor that the law did not understand. The machine was only a way in which part of the business of the shop was *bona fide* conducted.

To turn now to the judgment of HAWKINS, J., in the *Wheeldon Case*, *supra*, we find there a decision which emphasises the provisions of s. 15 of the Pharmacy Act of 1868, in regard to the sale of poisons by unqualified persons. That section provides that "any person not being a duly registered chemist who shall *sell* or keep an open shop for the retailing, dispensing or compounding of poisons . . . shall for every such offence be liable to pay a penalty of £5 to be sued for and recovered by the Pharmaceutical Society. Wheeldon was an unqualified assistant to a qualified chemist. He sold a packet of vermin

killer over his employer's counter to a young woman who poisoned herself with it. The Society thereupon sued Wheeldon for the £5 penalty, and the county court judge held that the defendant was liable. On appeal to the Divisional Court (POLLOCK, B. and HAWKINS, J.) HAWKINS, J., delivering the judgment of the court at some length, said :—

"It was contended on behalf of the appellant that it was not unlawful under s. 15 for an unqualified assistant to a duly qualified chemist to sell poisons in his master's shop in the ordinary course of business; that the sale by the appellant being a mere sale by him as a servant in the discharge of his duty, the master was in law and in fact the vendor; and that as the master was qualified the sale was lawful . . . Nothing to our minds can be clearer than that the object of the Act was beyond all other considerations to provide for the safety of the public, and to guard, as far as possible, all members of the community from the disastrous consequences so frequently arising from the sale of poisons by persons unacquainted with their baneful properties; and the whole object of the Act would be frittered away and the Act itself become a dead letter were we to declare by our judgment that an unqualified assistant can lawfully and with impunity sell any of the poisons to which the Act applies unless upon each occasion of such sale he acts under the personal supervision of a qualified employer, or a qualified assistant to such employer."

That decision has never been challenged. For forty years it has been acted upon and is still being acted upon to-day, the Pharmaceutical Society insisting that no scheduled poison shall be sold, even in a chemist's shop, by an unqualified assistant. Hundreds of claims for the £5 penalty have been and are still being successfully made in the county court, and the law remains unchanged.

What then is the effect of the judgment of the Divisional Court on 24th April in the *Watkinson Case?* It is that a chemist who has no qualified, but only unqualified, assistants (or for that matter no assistant at all) may place bottles or packets of deadly poison (*which the law requires shall be sold only by qualified persons*) in automatic machines from which the public may help themselves! As Judge CRAWFORD (quoted in this respect with approval by TALBOT, J.) said, "if it was possible to get a bottle of dangerous poison through an automatic machine without breaking the law it was unfortunate, because any child who had attained the limited stature to enable it to reach the effective part of the machine could get a bottle." So much for the first reason we gave at the outset why the recent case is of exceptional interest and importance.

It is only necessary to carry the matter one stage further to appreciate the second reason. The Bill just leaving the House of Lords for consideration by the House of Commons provides that the sale of deadly poisons shall no longer be restricted to *qualified chemists*, but that they may be sold to the public by *any* tradesman on obtaining a licence from the local authority to do so. That is a very wide extension of the concession made by Parliament in 1908 which allowed arsenical weed-killers, sheep-dips and other horticultural and agricultural requisites, also various disinfectants of the lysol and carbolic acid type, to be sold by other "licensed" but unqualified tradesmen. The judgment now delivered will obviously apply equally to these "licensed" vendors as to chemists; and it may well be that Parliament will hesitate to pass into law a measure that will enable any tradesman to supply lysol or arsenic or any other deadly poison by means of automatic machines from which the public can take their own supplies without any supervision whatever.

Mr. FREDERICK WILLIAM WAREHAM, solicitor, 34, Surrey-street, Strand, and Wimbledon, has been appointed Clerk to the Justices for the Wimbledon Division of the County of Surrey. Mr. Wareham, who was admitted in 1894, also holds the appointments of Clerk to the Tithe Assessors for St. Margarets, Lothbury, and Vestry Clerk, and Clerk to the Tithe Assessors, for St. Bartholomew by the Exchange.

Company Law and Practice.

LXXV.

DECLARATION OF CHARGE IN DEBENTURE HOLDERS' ACTIONS.

I.

THE judgment in a debenture-holders' action is usually straightforward enough, but there is one feature which is sometimes present, and sometimes absent, but almost invariably causes some perplexity, and that is, the declaration of charge. The form that this declaration takes varies in accordance with the circumstances of each particular case, but that one which is probably of most usual application is set out in *Re Wolverhampton District Brewery Ltd.* (1899) W.N. 229; it runs like this: "Declare that the plaintiffs and all other the holders of mortgage debentures of the defendant company of the same issue as the plaintiffs' debentures are entitled to a charge upon (the description of the property charged taken from the debenture) for securing the repayment of the principal moneys and interest in the debentures mentioned."

As has been pointed out, this is logically the basis of the relief subsequently given in the judgment; thus, there can be no justification for ordering an account of what is due to the plaintiffs and the other holders of mortgage debentures issued by the defendant company under and by virtue of such debentures, unless the debenture-holders are entitled to a charge upon the company's property, or some part of it, to secure the repayment to them of principal money and interest. Nevertheless, there are occasions when the court will make the usual order, comprising as it does various accounts and inquiries which must go on the basis of a charge, omitting the declaration of charge. The reason for this omission is given by VAUGHAN WILLIAMS, J., in the case of *Marwick* v. *Lord Thurlow* [1895] 1 Ch. 776, where that learned judge refused to make an order including a declaration of charge in a debenture-holder's action commenced subsequently to the date of a winding-up order, without the consent of the Official Receiver, who was provisional liquidator of the company.

The learned judge says in that case, at p. 777: "While the company is solvent and a going concern those who have the direction and management of it do not always take the same view of the validity of alleged charges as that which I might take, especially where the directors are the nominees of the vendors. And after a winding up order the liquidator does not invariably take the same view as that previously taken by the directors. But when an inquiry as to the validity of the debentures is suggested, the court is frequently hampered by the existence of a declaration, perhaps made in a short cause which, it is said, establishes beyond hope of recall the validity, though, of course, not the priority, of the debentures . . . After a winding-up order I shall not make the declaration asked for without the assent of the Official Receiver and liquidator being placed on record." This is the practice which exists at the present time; thus, where a winding up order is made before the motion for judgment (or, where those interested attend the motion for the appointment of a receiver, and consent to treat such motion as the trial of the action, and to the usual judgment, before such motion), even if it be only just before, the presence of the Official Receiver is necessary, if he be still provisional liquidator, or of the liquidator, if one has been appointed. If such person consents, the declaration of charge will be inserted, otherwise it must be omitted.

In *Re Gregory Love & Co. Ltd.* [1916], 1 Ch. 203, it was argued that a judgment which did not contain a declaration of charge, but ordered accounts and inquiries in the usual way, affirmed the validity of a debenture which was subsequently called in question. SARGANT, J., however, would have none of this, and, at p. 209, he says: "But, whatever the ordinary object or course of such a judgment as the present may be, I cannot hold that the applicant (in this case the liquidator) or the company he represents is estopped from going into the real

facts of the case, unless there is something in the judgment which makes some definite assertion to the contrary of these facts, and such a definite assertion I have not been able to find in it."

In a case which occurs with some frequency, where the company appears, and attends on the motion for the appointment of a receiver, and consents to treat the motion as the trial of the action, and to the usual judgment, it is not the practice to insert a declaration of charge, and the advantage of this is shown by *Re Gregory Love & Co.*, where the motion for the appointment of a receiver had been by consent treated as the trial. Incidentally it should be mentioned in passing that it may be (unless there is some substantial defence to the action) an advantage to the company to attend and consent to the motion being treated as the trial of the action, for by so doing a certain amount is saved in costs—in particular, there is no necessity either for a statement of claim, or for motion for judgment in default of defence—and an allowance is made to the company in respect of its costs. Further, the whole action is accelerated, and, if the company is going to survive the proceedings with prospects of a useful life before it, it is undoubtedly advantageous to it that the action should be cleared out of the way as soon as possible. From many points of view it cannot matter to the plaintiff in a debenture-holders' action whether or not the judgment does contain a declaration of charge, but next week I propose to deal with one particular set of circumstances in which the plaintiff may find himself at a disadvantage if he does not obtain such a declaration.

The Late Sir Edward Clarke.

On the announcement of the death of the veteran member of the profession, Sir Edward Clarke, one instinctively recalled and adapted the words of Scripture, "A Prince and a great man has fallen this day." For Sir Edward was indeed a great man as well as a great lawyer. No one more than he evoked the admiration and esteem of his professional brethren for his great gifts of advocacy, but even more than for his forensic achievements was that sense of admiration called forth by the fearless courage and high-mindedness he ever displayed in his work at the Bar and in public affairs. As was well said by Lord Haldane, the then Lord Chancellor, at the banquet in Lincoln's Inn Hall in July, 1914, when Sir Edward was entertained by the members of the Bench and the Bar on the occasion of his retirement from practice after fifty years of active life: "He has carried on the best traditions of the great profession to which he belonged. He has never flinched; he has never fought for his client less keenly than he would have fought for himself. Always scrupulous, always just, always desiring to do what was right, he has yet stood up for those who were his clients on memorable occasions and shown himself possessed of those qualities which we in this Hall venerate." What was the secret of Sir Edward's success? The answer is, that quality of high-mindedness to which we have already referred, coupled with hard and continuous work. In his youth, although deprived of the advantages of an academic career such as has fallen to the lot of most men who have risen to great places in the law, he set himself to compensate for this deprivation by assiduous study and attendance at evening classes in the City. With his passion for knowledge he soon equipped himself for entering upon the study of the law which, however, he then regarded merely as an avenue by whose portals he could attain distinction in public life. Many years ago he recalled that by what most men would call a pure accident he one day noticed in looking over a tray of old books, displayed outside a shop in what was then Holborn Hill, a copy of Spilsbury's "Lincoln's Inn," in the appendix to which he found an account of certain studentships in law, divinity and physic, which had been founded by one Christopher Tancred, of Whixley Hall, Yorkshire, and he further ascertained that the law studentships, although connected with Lincoln's Inn, were for young men proposing to practise at the common law Bar. That chance discovery was indeed a find to be utilised, and in fact young Edward Clarke was later awarded a Tancred studentship, and immediately thereafter was admitted a student of Lincoln's Inn, of which he was for many years the senior bencher. Success at the Bar and success in the House of Commons pointed him out for legal office, and for some years he was Solicitor-General. He might have held the same office for a second term but by that time it had been decided that the law officers should be precluded from private practice, and as he refused to accept this condition he declined office. His objection to this newly-imposed condition was not on financial grounds, for the pecuniary rewards, in the shape of salary and fees for contentious work coming both to the Attorney-General and Solicitor-General, were and still are on a very generous scale. Sir Edward's objection was that the new rule cut the law officers off from their brethren at the Bar almost entirely, and limited the class of work falling to them in a way that might seriously militate against them when out of office. He may have been mistaken, but the attitude he adopted was quite intelligible. His refusal of a second term as Solicitor-General, however, in no way affected the esteem in which he was held by his political chief, Lord Salisbury, who on a vacancy occurring in the position of Master of the Rolls, offered it to Sir Edward, who, however, declined it, preferring to remain in Parliament and in practice at the Bar. Rather more than twenty years ago he brought out a volume of his "Selected Speeches" which include several of his great forensic efforts, among others that in the *Penge Case* and the defence of Adelaide Bartlett, which deserve to be carefully studied by all who aspire to success in the courts. Among Sir Edward's various other activities was the preparation of a system of shorthand which he used himself and which is used by at least one reporter for a legal publication. Sir Edward was a great churchman and lavish in his benefactions to the church he loved.

A Conveyancer's Diary.

A recent case which baffles me is *Re Jones; Jones* v. *Cusack-Smith* [1931] 1 Ch. 375. The case has been discussed and commented upon rather freely, so that I have the advantage of the views of others upon it, but for all that the more often I read the report of it the more puzzled I am.

Trustees for Sale consulting their Beneficiaries.

The facts are stated in the report as follows:—

"The trustees for the purposes of the Settled Land Act, 1925, of a settlement of real estate made under the will, dated February 5, 1881, of a testator, obtained, on April 3, 1930, an order (in administration proceedings which were commenced in 1906) declaring that, in the events which had happened, they were entitled to exercise all the statutory trusts and powers conferred upon trustees for sale by the Settled Land Act, 1925, and the Law of Property Act, 1925, and the Law of Property (Amendment) Act, 1926."

That is all!

It may be as well to pursue the report. We are told that "the trustees took out a summons for the determination of the question (*inter alia*) whether the provisions of s. 26, sub-s. (3), of the Law of Property Act, as amended by the Act of 1926, applied only in respect of sales by the trustees for the purposes of the Settled Land Act, in exercise of the statutory trusts, or applied also in respect of all or any and if so what other acts and dealings by the trustees in relation to the settled

estates or the moneys or investments representing the same in exercise of the statutory trusts and powers conferred upon trustees for sale by the above-mentioned statutes and the additional or larger powers conferred by the settlement on the trustees thereof or otherwise."

This is just about as pretty a jumble as I have seen for a long time!

Take the facts, as stated, first of all. It seems that the trustees of a settlement obtained an order authorising them to exercise all the statutory trusts and powers conferred upon trustees for sale by the S.L.A., and the L.P.A., and the L.P. (Amend.) A.

How such an order came to be made I cannot even conjecture. However, there seems to be no doubt that it was in fact made. We therefore have it that the trustees of a settlement for the purposes of the S.L.A., had the named powers conferred upon them. Amongst other powers there are those which are conferred upon trustees for sale by the S.L.A. I do not know of any such powers. The S.L.A. does not confer any powers upon trustees for sale. Then there are conferred powers which are conferred upon trustees for sale by the L.P.A. and the L.P. (Amend.) A. The L.P.A. certainly confers powers upon trustees for sale in s. 28 of that Act, but I do not know that the Amendment Act confers any such powers.

I suppose that we must take it, however, that the trustees of the settlement had under the order of court the powers conferred upon trustees for sale by s. 28 of the L.P.A.

Then the trustees issue a summons asking in effect whether they must consult their beneficiaries in respect of the exercise of all their statutory duties, or only with regard to the exercise of the trust for sale. We are not told, by the way, what other powers or duties the trustees were proposing to exercise, but perhaps, in this report, it would have been too much to expect that we should. Moreover, the trustees were not trustees holding upon the statutory trusts, nor were they trustees for sale. They were trustees upon whom a power of sale had been conferred by the court.

Before turning to the statutory provisions regarding the duty of trustees for sale to consult their beneficiaries, I may mention one other curious fact about this case. In the statement of facts, no mention is made of a tenant for life, but it appears that there was one, because it is stated that counsel appeared for such a person. Now, what would one have expected the tenant for life to contend in such circumstances? By the order of court the powers which he should have had were conferred on the trustees of the settlement, and the question was, should the trustees consult their beneficiaries (of whom he was one)—so one would have thought that having been deprived of his powers, he would have been the first person to contend that he and the other beneficiaries should be consulted. But, not at all! The tenant for life appears by counsel to argue that the trustees must by no means consult him!

Now, let us look at the statutory provision with regard to trustees for sale consulting their beneficiaries, s. 26 of the L.P.A., as amended by the L.P. (Amend.) A.

Sub-section (1) of that section enacts that, if the consent of more than two persons is, by the disposition upon trust for sale, made requisite to the execution of a trust for sale then, *in favour of a purchaser*, the consent of any two of such persons "to the execution of the trust for sale or to the exercise of any statutory or other powers vested in the trustees for sale shall be sufficient."

Sub-section (2) provides that, where the person whose consent "to the execution of any such trust or power is expressed to be required," is not *sui juris* or is under disability, then, *in favour of a purchaser*, such consent shall not be requisite, but the consent of the parent or guardian of such person if an infant or of his committee or receiver if a lunatic or defective shall be obtained.

Sub-section (3), as amended, must be set out in full:—

"Trustees for sale shall so far as practicable consult the persons of full age for the time being beneficially interested in possession in the rents and profits of the land until sale and shall, so far as consistent with the general interest of the trust, give effect to the wishes of such persons, or, in case of dispute, of the majority (according to the value of their combined interest) of such persons, but a purchaser shall not be concerned to see that the provisions of this sub-section have been complied with.

"In the case of a trust for sale not being a trust for sale created by or in pursuance of the powers conferred by this or any other Act, this sub-section shall not apply unless the contrary intention appears in the disposition creating the trust."

It appears to me to be fairly clear what these sub-sections mean and to what trusts they apply. Sub-sections (1) and (2) are intended for the protection, or perhaps it would be better to say the relief, of purchasers, where under an express trust for sale the consent of persons is required to the exercise of the trustees' powers. They apply only in favour of a purchaser and only to express trusts. Sub-section (3), on the other hand, is intended for the protection of beneficiaries and has effect only where the trust for sale is statutory. The purpose and subject-matter of sub-ss. (1) and (2) are therefore, different from those of sub-s. (3).

That, however, is not the view taken by the learned judge, who held that the three sub-sections must hang together, and that because sub-ss. (1) and (2) apply to the exercise of any trust or power, sub-s. (3) must be construed in the same way.

With great respect, I venture to suggest that sub-s. (3) did not apply at all to the case which his lordship was considering. The power of sale in *Re Jones* arose under the order of court, and was not "a trust for sale created by or in pursuance of the powers conferred," by the L.P.A., or any other Act, although it was created by reference to those trusts. I also venture to say that there is no reason why sub-s. (3) should "hang together" with sub-ss. (1) and (2), which deal with trusts having a different origin and are designed with a different object.

It may be that if the facts were fully disclosed the difficulties would largely disappear, but I can only deal with the report as it is.

Landlord and Tenant Notebook.

Implications.

The development of the law of landlord and tenant has been much assisted by the willingness of courts of common law to imply terms into the contract. The implied covenants as to quiet enjoyment and repair are of long standing and well known; but even in their case the dynamic nature of the common law can be illustrated by a fairly recent decision, that of *Marsden* v. *Edward Heyes Ltd.* [1927] 2 K.B. 1, C.A., in which an implied covenant as to user (not of agricultural land) was recognised as a sort of corollary to the implied covenant to keep in good and tenantable repair. Among the less familiar implied covenants are the covenant to deliver up with vacant possession: *Harding* v. *Crethorne* (1793), 1 Esp. 57, and the covenant to preserve boundaries; the duty was described as contractual in *Att.-Gen.* v. *Fullerton* (1813), 2 V. & B. 263. And in the case of express covenants and terms the courts have not been slow to imply rights and duties qualifying or enlarging those expressed. The implied undertaking not to exercise a power to determine contrary to its terms was held to be capable of giving rise to an action for damages in *Gray* v. *Owen* [1910] 1 K.B. 622. A tenant whose landlord covenants to repair impliedly grants him a licence to execute repairs, as was established in *Saner* v. *Bilton* (1878), 7 Ch. D. 815. The

implied rights of "tied" tenants in the matter of quality, supply and price were discussed in the "Notebook" two weeks ago (75 SOL. J. 255). The implied duties of a landlord whose tenants enter into a covenant against alienation qualified by a proviso for consent not to be refused in the case of a respectable and responsible person (the limitation on the refusal is, of course, no longer necessary: L.T.A., 1927, s. 19) have been laid down in a number of cases, the most recent being *Houlder Bros.* v. *Gibbs* [1925] Ch. 575, C.A., in which the landlord was held to be entitled to object only on grounds connected with the user of the premises and the personality of the proposed alienee.

But the line must be drawn somewhere; and the decision of the House of Lords in *Tredegar* v. *Harwood* [1929] A.C. 72, administered a check to the aspirations of those who place too much confidence in the willingness of the courts to imply terms, and provides instructive reading for conveyancers who rely too strongly on what might be called the "*Verb. Sap.*" principle. The tenant was under a covenant to insure in the joint names of lessee and lessor "in the X Fire Office or in some other responsible insurance office to be approved by the lessor." At the request of her mortgagees she transferred the insurance from the X office to another concern, of which the landlord refused to approve, though admitting that it was a sound concern. His reason (which, having regard to the judgment, is irrelevant) was that the property was one of many on a large estate, and he found it convenient, for the purpose of checking renewals, to have all insured by the same company.

Tomlin, J., held that the covenant contained two stipulations, one of which was not fulfilled, and so decided in favour of the landlord. The Court of Appeal held that the covenant gave the tenant an option; the lessor had no right to insist on a particular office; and, basing their views on *Houlder Bros.* v. *Gibbs*, *supra*, that any objections must pass the test of reasonableness. In the Lords this case was distinguished from the present one, in that the covenant contained no proviso as to withholding consent. The Court of Appeal had, in Lord Dunedin's view, introduced complications and inferences where there was no room for the one or for the other. Lord Shaw pointed out that not one, but several, implications had been made: that consent was not to be unreasonably withheld, and that refusal must be justified, and that the justification must relate to the individual contract and also to the financial status of the insurance company. "This process of putting implication upon implication is not a legitimate mode of construing a very simple and plain condition." Lord Phillimore considered the word "responsible" to be merely "monitory," indicating that it would be no use suggesting a doubtful company, and summarised the effect as (1) a covenant to insure against fire, and (2) a covenant to insure with the X office unless both agreed to some other. In his dissenting judgment, Lord Blanesburgh took the view that the object of the covenant was to insure in a responsible office, and emphasised the difference between approval and selection.

A decision mentioned in the last-mentioned judgment, though not, apparently, cited in argument, was that of *Dallman* v. *King* (1837), 4 Bing. N.C. 105, mentioned in the "Notebook" of 29th November last (74 SOL. J. 797), on "Repairs, etc., to the satisfaction of a surveyor." This decision would certainly apply in a case in which the named company ceased business and the lessor approved no other.

His Honour Sir Francis John Greenwell, C.B.E., M.A., D.L., J.P., of Lanchester, Durham, for over forty years Recorder of Durham, County Court Judge of Circuit No. 1 since 1895, who died on 2nd February, aged seventy-eight, left estate in his own disposition of the gross value of £26,603, with net personalty £19,314. He left: All of his property to his wife for life (who died a few hours later on the same day), and, subject thereto, £100 each to his servants George Hunter, Philip Malone and Isabella Watson, if then still in his or her service.

Our County Court Letter.

ESTATE AGENTS' COMMISSION.

(*Continued from* 75 SOL. J. *p.* 75).

II.

IN *Symonds* v. *Gaze*, recently heard at Lowestoft County Court, the claim was for £22 10s. as commission on the sale of two bungalows, the plans of which had been shown by the defendant to the plaintiff, who had been asked to find purchasers. The plaintiff's case was that he had sent two prospective purchasers to the defendant, who subsequently communicated the fact that purchases had been completed for £480 and £450 respectively, which transactions were duly entered in the plaintiff's journal. The defendant's case was that (*a*) the two purchases were made through the sole agency of the defendant, without the plaintiff's intervention, (*b*) on receipt of a letter of introduction of a client, the defendant had written a postcard limiting the plaintiff's authority to cases in which he either took a deposit or gave a personal introduction to a specific purchaser. Corroborative evidence was given by the purchasers, the second of whom denied ever having been to the plaintiff's office. His Honour Judge Herbert Smith remarked upon the importance of the postcard, and pointed out that in any case an estate agent is not entitled to commission solely on a letter of introduction. There was also evidence that negotiations had been entered into, and alterations agreed in the plans, prior to the plaintiff's interview with either of the purchasers. Judgment was therefore given for the defendant, with costs.

In *Hankinson* v. *Vickers*, in the Divisional Court, the appellant had claimed £25 commission at Bournemouth County Court, but His Honour Judge Hyslop Maxwell had given judgment for the defendant, who had made no binding contract with the intending purchaser. Mr. Justice Swift held that the appellants had been employed to find a buyer and had done so, so that there was no question that they were entitled to their commission. Mr. Justice Macnaghten concurred in allowing the appeal, with costs.

A similar decision was given in *Burden* v. *Bowhay*, at Cardiff County Court, in which the claim was for £27 15s. commission due (under a written contract) in respect of the sale of a house. The defence was that, although a contract of sale and purchase had been entered into, the sale had not been carried out, as the defendant was not entitled to sell. His Honour Judge Thomas held that, although there was no stipulation as to the date of completion, a sale had been effected, and judgment was therefore given for the plaintiff, with costs.

In *James Styles and Whitlock* v. *Silman*, recently heard at Chipping Norton County Court, the claim was for £26 17s. 6d. as commission on the sale of two cottages. The plaintiffs' case was that they had written the defendant asking whether he would sell his cottages, and he had authorised them to negotiate a sale for £800. The plaintiffs subsequently informed the defendant that they had a client, "an Oxfordshire lady," who would pay £700, but the defendant discovered that the client was his next-door neighbour, to whom he sold the cottages for £775. The defendant's case was that he never gave the plaintiffs any instructions, but that his neighbour had done so, and they should look to her for their commission. His Honour Judge Randolph, K.C., observed that, even if the defendant had not agreed to pay the plaintiffs' commission, he had nevertheless accepted their nominee. The plaintiff had introduced "an Oxfordshire lady" without telling the defendant she was his next-door neighbour, and, although they might be lucky in the respect that they had done little for the defendant on this occasion, they might at other times do much work for nothing. Judgment was therefore given for the plaintiffs for the amount claimed, with costs.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to The Assistant Editor, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Impasse in Private Company.

Q. 2194. A and B are the only shareholders in equal shares and the directors of a private company. A, with a view to obstructing B, who can substantiate certain misfeasances against A in the past, resolutely refuses to take any interest whatever in the affairs of the Company or to attend meetings of directors, and he has written B resigning his directorate. Under the articles two directors shall be a quorum. In the meantime no cheques can be signed or the seal used, and matters have reached an *impasse*. B wishes to pass a transfer of some of his shares and to issue a certificate to the transferee with the object of appointing the transferee a director. He also wishes to appoint a new auditor in the place of A, who, contrary of course to the Companies Act, has hitherto acted in that capacity, and a new secretary, also in the place of A, and to change the situation of the registered office. Your advice is sought on the steps to be taken by B to accomplish his requirements. Could s. 114 be called in aid? If B as holding at least one-tenth of the paid-up capital requisitioned himself as director to hold a meeting, and such meeting could not be summoned because there is no quorum of directors to act, could B then summon the meeting in his capacity of requisitionist, and at the meeting, which A would be certain not to attend, pass the requisite resolutions to seal the certificate and appoint a new auditor and secretary? Alternatively, could a special resolution be passed to alter the articles so as to make one director a quorum?

A. The above alternative procedures are not available, as one person cannot form a quorum: see *Sharpe* v. *Daws* (1877), 2 Q.B.D. 26, and *In re Sanitary Carbon Co., Ltd.* [1877] W.N. 223. An application should be made to the court for a winding-up order as a preliminary to a reconstruction: see *In re Kentmere* [1897] W.N. 58, and *In re American Pioneer Leather Co., Ltd.* [1918] 1 Ch. 556. It may suffice, however, to bring A to reason if B applies only for the appointment of a receiver, as in *Stanfield* v. *Gibbon* [1925] W.N. 11.

Building Society—Redemption Fee—Legality of.

Q. 2195. A certain building society by its rules requires to be made upon the discharge of a mortgage to it a payment by the mortgagor equivalent to 1¼ per cent. of the total amount advanced by the society on mortgage. The mortgage deed contains a covenant by the mortgagor to observe the rules of the society. Upon payment off of the mortgage, payment of this fee, known as a redemption fee, is actually demanded. Will you please advise whether this sum can be recovered by the building society. Is it not in the nature of a clog on the equity of redemption, inasmuch as the payment of it is a condition imposed upon the mortgagor over and above and after discharge of the mortgage principal, interest and costs, and generally upon the matter.

A. We express the opinion that this fee would be recoverable. Such a rule is common, and not in our opinion unreasonable. The rules of the Society "regulate (as between the society and the mortgagor) the provisions of the mortgage deed": "Snell's Equity," 15th ed., p. 281, citing *Strohmenger* v. *Finsbury Building Society* [1897] 2 Ch. 469. The redemption fee would certainly not be a clog on the equity of redemption. Such a clog is something which will prevent the mortgagor, on redemption, from recovering the mortgaged property in the same condition as it was before he parted with it to the mortgagee.

Registration of Masonic Lodge.

Q. 2196. A masonic lodge charges its members an annual subscription of £5 5s., which includes refreshments for eight meetings and also wines (intoxicants).

(*a*) Must the lodge register as a club with the clerk to the justices?

(*b*) Must the lodge pay excise duty at 6d. in the £ on its sales of wines?

(*c*) Can the lodge supply wines, etc., after 10 p.m.?

The lodge pays retail prices for its purchases of intoxicants.

A. (*a*) The above facts do not disclose a habitual user of a house or part of a house within the Licensing (Consolidation) Act, 1910, s. 91 (1). The lodge need therefore be registered with the clerk to the justices.

(*b*) The excise duty is not payable, as the requirements of the Finance (1909-10) Act, 1910, s. 48, only apply to registered clubs.

(*c*) The lodge can supply wines, etc., after 10 p.m., as the Licensing Act, 1921, s. 1, only applies to registered clubs, as stated in s. 20. It is assumed that the lodge does not meet on licensed premises.

Devolution of Statutory Tenancy.

Q. 2197. S, who was at the date of his death (4th August, 1930) a protected tenant under the provisions of the Rent and Mortgage Interest Restrictions Act, 1920 to 1925, died intestate, and without any estate involving the necessity of obtaining a grant of administration. R, the daughter of S, continued to pay the rent and was acknowledged by the landlord to be the tenant. R married and left the premises in question in November, 1930. H, the son of S, tendered the rent, which was refused, and the landlord intimates that he intends to have H ejected and refuses to recognise him as a tenant, although the landlord has accepted the rent from H as agent of R.

(*Note.*—The amount of the rent is not in dispute by either party. No notice to quit has been served and no rent is in arrear. The premises will continue to be used as a dwelling-house only.)

(1) Presumably R had the right to be considered "tenant" within s. 12 (1) (*g*) of the 1920 Act?

(2) If so, has H an equal right? And would H be safe in resting on a plea of tender in the event of proceedings being brought?

P.S.—H has occupied a few rooms throughout R's tenancy and took over the whole premises when R left. Landlord has never entered premises under s. 2 of the 1923 Act, and the said premises have never been out of the family's possession.

A. (1) R was the "tenant" within s. 12 (1) (*g*) of the 1920 Act, provided that (*a*) S died intestate leaving no widow and (*b*) R was residing with him at the date of his death.

(2) H has no equal right, as only one member of the family of the deceased can be regarded as tenant. The postscript indicates, however, that H was a sub-tenant of R, who was entitled to sub-let in accordance with *Roe* v. *Russell* [1928] 2 K.B. 117. The rooms occupied by H are therefore not decontrolled, and he can claim protection of the Act of 1923, s. 2 (1), first proviso, as regards his original rooms, but not for the whole house. It is a question of fact for the court whether R is still in constructive possession, as rent was accepted from her through H as her agent, but the evidence

appears to be that she has given up possession. H can rest on the plea of tender, but the landlord might contend that R has assigned the whole house, which she was not entitled to do. The opinion is given, however, that possession would not be ordered of the whole house, and that H could retain his original rooms.

Rent Restriction Acts—Decrease of Rates must be passed on to Tenant.

Q. 2198. Can you please say whether the owner of weekly property occupied by statutory tenants is bound, by adjusting the rent, to give the tenants the benefit of a reduction in the rates without a request being made by the tenants? The matter is of some importance in view of the reduction in the London county rate just announced.

A. It is assumed that at some time or other notice of increase of rent on account of increased amount of rates has been given. If so, the tenant can claim a decrease of rent on decrease of rates, and if he pays on the higher basis can recover the difference under s. 14 of the Act of 1920 (*Strickland* v. *Palmer* [1924] 2 K.B. 572). The landlord must show in the rent book what part of rent represents rates (Statement of Rates Act, 1919). If there are any cases in which there has not been an increase of the standard rent on account of increased amount of rates, or if the decrease of the amount in the £ reduces the amount to less than that included in the standard rent (a very unlikely event), the tenant could not claim the benefit.

Vendor and Purchaser—Reservation of Right to Build—Whether Registrable as Land Charge.

Q. 2199. A conveyance on sale of buildings to P contains a proviso that P and his successors in title should not be entitled to any right of access of light or air to the buildings which would restrict and interfere with the free user for building or other purposes of the adjoining land belonging to the vendor: (i) Should such a provision be registered as land charge? (ii) On P's selling the buildings, should the conveyance to the purchaser from P be made subject to the above proviso?

A. (1) The proviso operates as one excluding derogation or by way of exception of something which would otherwise pass under implied general words. It is not registrable, see "Everyday Points of Practice," pp. 346, 347, 359. (2) It is considered desirable that it should be mentioned, and that the vendor can so claim, though it is not essential.

Administration of Estates Act, 1925—Issue of Deceased Brothers and Sisters.

Q. 2200. The intestate left one sister, two children of a deceased sister and three children of a deceased brother (who left a widow living), and according to the text books, distribution should take place as to one-third to the sister, one-sixth to each child of the deceased sister, and one-ninth to each deceased brother's child. The Act, s. 46 (1) (5) (1), provides, that the residuary estate shall be held on the statutory trusts for the following persons *living at the death* of the intestate, i.e., the brothers and sisters. Section 47 (1) appears to establish the fact that the issue of any deceased child of the intestate takes the parents' share, but sub-s. (3) does not make it quite clear that issue of a deceased brother or sister (deceased at the death of the intestate) are entitled to their parents' share. Further, has the widow of the brother mentioned above, any interest whatsoever in the estate?

A. It is not agreed that s. 47 (3) does not make the matter quite clear. Under this sub-section you take the class of persons (in this case "brothers and sisters of the whole blood") and you substitute these words for children or child, as the case may be, in sub-s. (1) (i), and you get "in equal shares if more than one for all or any the brothers and sisters or brother or sister of the whole blood of the intestate, and for all or any of the issue of any brother or sister of the whole blood of the intestate who predeceases the intestate." The widow of a pre-deceased brother has no interest in the estate.

In Lighter Vein.

The Week's Anniversary.

The 3rd May, 1779, was the birthday of Sir Lancelot Shadwell, Vice-Chancellor, a judge "swift to hear and slow to decide, pure and blameless in life, an example of courtesy, gentleness and amenity." Moreover his decisions were but rarely reversed.

In person he was remarkably handsome and possessed a face which, according to a contemporary writer, many a husbandless lady would have given much to possess.

At the Bar he was the ideal advocate, never wandering from the real point, never allowing personal vanity to affect the conduct of a case. Such was his solicitude for his clients' interests that he refused to practise in any court but the Lord Chancellor's, lest otherwise he might have found himself engaged in two cases simultaneously and been obliged to give them "an imperfect, hasty and divided attention," a course which he considered as not "consistent with justice, much less with honour."

"Without the Option."

A new play has for its theme a judge haunted by the malevolent influence of a murderer whom he had once condemned to be hanged.

In connexion with the passing of the death sentence, popular imagination always loves to probe the emotions of the judge, and not infrequently to conjure up visions of his mental anguish.

As a matter of fact this particular judicial function is often less trying than less impressive duties. The judge has no option but to pass this sentence, and is therefore relieved of the personal responsibility which usually rests upon him in allotting punishments. This was the view of the late Mr. Justice Alpers of the New Zealand Bench. On the other hand Mr. Justice Manisty felt otherwise, and for that reason would not preside at murder trials.

An Excess of Tact.

There was once a judge who had to try a murder case on a day when he was giving a big dinner party in the evening. His loving wife begged the guests not to mention trials or criminals as she was sure he would be terribly upset by the sentence he had had to pass. At table the guests dutifully kept clear of the obnoxious subject, but topics were soon exhausted and the conversation began to flag. At last a very self-conscious silence revealed the truth to the judge. Thereupon he remarked loudly to his wife at the far end of the table: "My dear, I had the very great pleasure this afternoon of consigning an unmitigated scoundrel to his doom." That smashed the ice.

Justice not Blind.

It appears that Magistrate Mogilesky, of New York, recently gave a demonstration of card-sharping during a case in his court when he identified cards face downwards.

Thus do strange incidents recur, for here is repeated a famous feat performed by Jervis, C.J. The prosecution in a card-sharping case, had repudiated any intention of challenging the fairness of the actual cards used. They had, indeed, been examined by the Brighton magistrates, who had detected no marks.

"The Brighton magistrates!" repeated the Chief Justice contemptuously when he was informed of this. Adjusting his glasses he examined the cards and then, handing one to the prosecuting counsel, pointed out a minute mark on its corner. "That means the ace of diamonds," he explained, and proceeded to go through the whole pack, identifying each card.

The prisoners, members of a notorious gang, were convicted principally on the learned judge's evidence.

Correspondence.

"Licences to Assign: The Landlord's Costs."

Sir,—With reference to your contributor's queries at the conclusion of his very interesting article in your last issue, my replies, based on an experience of nearly forty years, are as follows:—

It is not the practice for solicitors to demand an undertaking in these cases to pay an indefinite sum. To talk of delivering a bill of costs makes the talker look ridiculous. As to the length of a licence, as a solicitor recently said to me, "the shorter the better." One guinea or one guinea and a half is a reasonable fee for a licence, and possibly in exceptional cases two guineas might be fairly charged. The fact that a higher charge is made by some solicitors only illustrates the unfortunate fact that some solicitors are ready to charge excessively where persons other than their own clients are paying costs. As to an action for a declaration, I can only imagine that the court would resent its time being taken up over such a trumpery matter. Recent legislation safeguards lessees against landlords who are unreasonable over the granting of licences to assign. There is really very little reason for inserting a covenant against assignment in ordinary cases at all, and it is a great pity that its existence in leases is made the grounds for obtaining, or trying to obtain, excessive fees.

27th April. A Solicitor.

United Law Clerks' Society Annual Festival.

We have much pleasure in publishing the following letter which has been addressed by the president of The Law Society to prominent members of both branches of the legal profession.

Dear Sir,—The committee of the United Law Clerks' Society have been good enough to do me the honour of asking me to preside at their annual dinner, to be held at The Connaught Rooms, at 7 o'clock, on the 12th May.

I owe so much to those who have helped me and my predecessors in the profession that I am very anxious to make this meeting a success and to attract to the society substantial subscriptions. I know that this is not a good time to ask for money, but that very circumstance makes the appeal more necessary. I would ask you to consider for a moment how much each of us owes to the loyal assistance of our staff, and to repay some part of that debt by helping those who in old age or sickness are now in need of help.

The funds of the society are, I know, very carefully managed, every case is carefully inquired into and no part of the funds is wasted.

The Lord Mayor of London, Sir William Phené Neal, who is himself a solicitor, has been good enough to say that he will be present at the dinner and it would be a graceful act if you could make it convenient to attend, but in any case I hope you will give due consideration to this appeal and send such donation as you may think fit in the enclosed envelope.

Yours very sincerely,
Roger Gregory,
President of The Law Society.

2 Stone Buildings,
Lincoln's Inn, W.C.2.
15th April.

Summary Justice.

Sir,—It would be interesting to know the views of your readers as to whether it would not improve the administration of justice if all clerks to justices were compelled to devote their whole time to the work and not allowed to engage in private practice. If, necessary, one clerk might serve several petty sessional divisions or he might combine with the office that of clerk to the local district council, in the same way that the clerk to the county council is also clerk of the peace. I understand all medical officers of health are whole-time men, and is not the same condition advisable as to justices' clerks?

Birmingham, Nemo.
23rd April.

Reviews.

Fisher and Lightwood's Law of Mortgages. Seventh edition. Revised and largely rewritten by John M. Lightwood, M.A., of Lincoln's Inn, Barrister-at-Law, formerly a Fellow of Trinity Hall, Cambridge. London: Butterworth & Co. (Publishers), Ltd. pp. 819, Tables of Statutes and Cases ccxii, Index 106. La. 8vo. £3 10s. net.

A new edition of "Fisher on Mortgages" would, in any case, be welcomed by the legal profession, but this edition is particularly so, coming from such a learned and experienced conveyancer and writer as Mr. Lightwood. In fact, this volume may be regarded as a new and up-to-date treatise on this subject, for although to some extent the learned editor has retained the matter (often in a revised and compressed form) of the last edition, he has almost entirely rewritten it.

What must strike the reader at a first glance at this book is the small compass of it. In about 800 pages Mr. Lightwood has managed to cover the whole subject of mortgages and, indeed, to go further and deal with the cognate subject of liens. Mr. Lightwood's style is a model of clarity and conciseness.

Having regard to the great alterations in the law effected by the Law of Property Act, it was, of course, inevitable that much of the commentary contained in the earlier editions should be discarded, and the learned editor has not included anything which is not still of value. On the other hand, he has supplied in a succinct form the most complete statement of the law as it at present stands which has yet been published.

The part of the volume devoted to "The practice in foreclosure and redemption actions" will be found invaluable as a practical guide to such proceedings, especially we think, the chapter on "Taking of accounts."

The printing and make-up of the volume are excellent, and the index and tables of cases and statutes have been well done.

In recommending this book we need to do more than say that it is a worthy successor to a justly famous work.

1066 *and All That.* A memorable History of England, comprising all the parts you can remember, including 103 Good Things, five bad Kings and two genuine dates. By Walter Carruthers Sellar, Aegrot., Oxon, and Robert Julian Yeatman, Failed M.A., etc., Oxon. Illustrated by John Reynolds, Gent. Methuen and Co. Limited. 5s. net.

We are most grateful to the would-be learned and/or impecunious authors and to the gentle illustrator for this excellent bit of foolery. An extract from the "Compulsory Preface," following upon dedication "*Absit Oman,*" and the title page above, leaves the reader in no doubt as to the scope of this work, viz.:—

"Histories have previously been written with the object of exalting their authors. The object of this History is to console the reader. *No other history does this.* History is not what you thought—*it is what you can remember.* All other history defeats itself. This is the only Memorable History of England, because all the History you can remember is in this book, which is the result of years of research in golf-clubs, gun rooms, green rooms, etc. For instance, two out of the four Dates originally included were eliminated at the last moment, a research done at the Eton and Harrow match having revealed that they are *not memorable* . . ."

No lawyer appears to have been found "memorable" in the history of England, save Judge Jeffreys, who is thus commemorated: "The Rebels were ferociously dealt with by the memorable Judge Jeffreys, who was sent out by James as a justice of Ire in the West, where he made some furious remarks about the prisoners, known as 'Bloody Asides'."

The only legal institution mentioned is the King's Bench, thus: "Edward I was thus a strong King, and one of the first things he did was to make a strong arrangement about the Law Courts. Hitherto there had been a number of Benches there, on all of which a confused official called the Justinian had tried to sit. Edward had them all amalgamated into one large Bench called the King's Bench, and sat on it himself."

Turning to the reigns of august personages of later date, the following facts are, *inter alia*, memorable:—

"Finding herself on the throne Queen Victoria immediately announced her intention of being good and plural *but not amused*. This challenge was joyfully accepted by her subjects, and throughout her protracted reign, *loyal and indefatigable attempts to amuse her* were made by Her Majesty's eminently Victorian Ministers and generals . . .

"There was also in Queen Victoria's reign a famous inventor and poet called Oscar Wilde, who wrote very well but behaved rather beardsley; he made himself memorable by inventing Art, Asceticism, etc., and was the leader of a set of disgusting old gentlemen called 'the naughty nineties.'

"In conclusion no "Edwardian" is likely to quarrel with this thumb-nail sketch of his idol:

"Edward VII was quite old when he came to the throne, but this was only on account of Queen Victoria, and he was really a very active man and had many romantic occupations: for instance, he went betting and visited Paris and was sometimes late for dinner; in addition he was merry with actresses and kind to gypsies.

"Besides all this Edward VII smoked cigars, was addicted to entente cordials, married a Sea-King's daughter, and invented appendicitis. Edward VII was thus a very Good King, besides being a Good Thing and *amused* and, in fact, almost a *Monarch*. He is also memorable because he preferred making peace instead of war."

The Dictionary of Income Tax and Surtax Practice. By W. E. Snelling. Eighth Edition. London: Sir Isaac Pitman and Sons, Ltd. 25s.

This is a useful work and of considerable value to those who are unfortunate enough to have to deal with the intricacies of income tax. Since the date of the seventh edition, important changes in the laws have taken place and the new edition incorporates many new cases.

A summary of income tax practice (dealing with assessments, allowances, dominion relief, returns, houses and land, repayment and surtax) precedes the main dictionary, which is just the thing the busy practitioner requires to put him on the track of the relevant sections of the Acts and appropriate cases in a general text-book embodying the Income Tax Acts and Schedules.

The type and general arrangement are good, and the index adequate, and the new edition can be confidently recommended.

Elements of the Law of Contracts. By Arthur Berriedale Keith, D.C.L., D.Litt. Oxford: At the Clarendon Press. 5s. net.

The author, in his preface, describes this work as "a short sketch written in the hope that it may serve as an introduction to the study of the standard treatises of Anson, Pollock and Salmond in the Law of Contracts, and that the epitome of the law contained herein may prove useful as a summary statement of the principles discussed at length in these valuable works." With respect to the learned author, it is suggested that this book will serve an even more useful purpose, in providing a short "refresher" course in the law of contract for practitioners who have long ceased to be familiar with such works as Anson, Pollock and Salmond. Owing to restrictions upon the size of the book, "it has been necessary to present principles without regard to exceptions of minor importance, and to adopt in cases of dispute what appears to be the more probable view without discussion of reasons for and against." Some readers will think that these restrictions have produced an excellent result. For example, owing to them we have the law as to the sellers' remedies arising out of an infant's contract to purchase goods (not being necessaries) set out more clearly and memorably than would be possible in a more detailed work. The statement of each principle is accompanied by reference to recent decided cases.

Manual of Company Law and Practice. By Leslie Maddock, Barrister-at-Law. London: Sir Isaac Pitman & Sons, Ltd. 10s. 6d.

The preface to this new work on company law contains no apology for its introduction, notwithstanding the number of books on this branch of law already in existence, but a perusal of its pages quickly establishes the care and accuracy with which it has been compiled.

The Consolidating Act of 1929 has not been printed in full, but references to the main provisions appear to have been duly noted, and the author has succeeded in his attempt to outline fully, with brevity of statement, existing law side by side with existing practice.

Special sections have been embodied dealing with leading cases, stamp duties and fees and taxation of profits, and these should be helpful both to the practitioner and the company official. A useful secretarial guide and many forms have been embodied.

Books Received.

Butterworth's Yearly Digest of Reported Cases for the Year 1930. Being the yearly Supplement of Butterworth's Thirty-two Years' Digest, 1898-1930. W. S. Goddard, M.A., Barrister-at-Law. 1931. pp. xxiii and 334, with List of Cases and Statutes referred to, pp. 29. London: Butterworth & Co. (Publishers), Ld. 21s. net.

Willings Press Guide. 1931. Fifty-eighth Annual Issue. A Comprehensive Index and Handbook of the Press of the United Kingdom of Great Britain, Northern Ireland and the Irish Free State, together with the Principal Dominion, Colonial and Foreign Publications. London: Willing Service Advertising, 356-364, Gray's Inn-road, W.C.1. 2s. 6d. net.

The Law Relating to Real Property and Conveyancing in a Nutshell. Marston Garsia, B.A., Barrister-at-Law. Fourth Edition. 1931. Demy 8vo. viii and 131. London: Sweet & Maxwell, Ltd. 5s. 6d. net.

The Stock Exchange Official Intelligence for 1931. Being a carefully revised Précis of Information regarding British, Indian, Dominion, Colonial, American and Foreign Securities. Edited by the Secretary of the Share and Loan Department of the Stock Exchange. Published under the sanction of the Committee of the Stock Exchange. London: Spottiswoode, Ballantyne & Co., Ltd., 1, New-street Square, E.C.4. 60s. net.

Ancient Law, its connection with the early History of Society and its relation to Modern Ideas. Sir Henry Sumner Maine. With an Introduction by C. K. Allen. 1931. Demy 18mo. pp. xxviii and (with Index) 344. London: Oxford University Press; Humphrey Milford. 2s. net.

Tulane Law Review. April 1931. Vol. V. No. 3. Devoted to the Civil Law, Comparative Law Codification and Statutory Interpretation. Tulane University College of Law, New Orleans, U.S.A. $1.

Notes of Cases.

House of Lords.

Kinneil Cannel and Coking Coal Co. *v.* Sneddon or Waddell.

21st April.

WORKMEN'S COMPENSATION ACT, 1925, s. 29 (1)—PROCEEDINGS INDEPENDENTLY OF THE ACT—PAYMENT INTO COURT OF COMPENSATION—RIGHT TO SUE NOT TAKEN AWAY.

This was an appeal from the Second Division of the Court of Session in Scotland and raised the question whether the right of a widow to sue at common law (in England under Lord Campbell's Act) for damages for the death of her husband was taken away by the Workmen's Compensation Act, 1925, s. 29 (1), by reason of compensation paid under the Act in proceedings by a third party. Thomas Waddell, a workman in the employment of the company, lost his life in a pit accident. He left a wife and two children and also a stepson who was a dependent under the Act. The widow, on behalf of herself and her two children, took proceedings to enforce her common law remedy, and subsequently the stepson took proceedings alone under the Act, in which the company paid the maximum compensation payable by them under the statute. The company pleaded that the present action was incompetent. The Second Division repelled that plea, and the company now appealed to this House.

Lord BUCKMASTER, in giving judgment, said the first thing to notice was that s. 29 (1) of the Workmen's Compensation Act, 1925, began by an express provision that nothing should affect the civil liability of the employer in case of negligence, but that the workman might in that event at his option select which remedy he would pursue. It was the latter part of the section on which the appellants relied. They said that it emphatically provided that in respect of the injury to the workman the employer could not be called on to pay in two independent proceedings. In his opinion the section had not that effect. The latter provision was intended to relate only to cases where the proceedings were taken by the same persons and where the workman had the option of proceeding either under the statute or at common law. To hold otherwise would be to declare that the statute had in special cases destroyed the rights which by the earlier part of the section had been expressly kept alive. The appellants, however, had in their favour certain dicta of Lord Atkin in the case of *Codling* v. *John Mowlem, Ltd.* [1914] 2 K.B. 61. Those expressions of opinion, however, were only dicta, and it was well, he thought, to say that he did not regard them as a correct exposition of the law. The judges of the Court of Session were unanimously against the appellants, and he thought their judgment was correct.

Lords DUNEDIN, WARRINGTON, THANKERTON and RUSSELL agreed.

COUNSEL: *Carmont*, K.C., and *James R. Marshall*; *Sir M. P. Fraser*, K.C., and *D. P. Blades*.

SOLICITORS: *Beveridge & Co.*, for *Mr. Craig*, Glasgow, and *W. & J. Burness*, W.S., Edinburgh; *Boxall & Boxall*, for *E. J. Findlay*, S.S.C., Wishaw, and *Erskine Dods & Rhind*, S.S.C., Edinburgh.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Spencer *v.* Mason and Others.

Lord Russell of Killowen, sitting as an additional Judge of Chancery Division. 26th and 27th March.

PARTNERSHIP PREMISES—LEASE IN ONE PARTNER'S NAME—PRIOR EQUITABLE MORTGAGE—MORTGAGEE'S RIGHT TO TAKE POSSESSION—COSTS.

The defendant Wallace Sole was tenant of 19 James-street, Covent Garden. In 1927, to secure money advanced to him, Barclays Bank took an equitable mortgage of the two leases under which he held. By his covenants with the bank, the lessee precluded himself from sub-letting the premises, and undertook to grant a legal mortgage if required. In 1929, he and the plaintiff, Charles Spencer, executed a deed of partnership whereby they agreed to carry on business together as fruit brokers at 19 James-street, for a period of three years. The partnership assets did not include the leases, and Spencer had no knowledge of the mortgage. In May, 1930, the defendant Mrs. Cecilia Mason, mother-in-law of Wallace Sole, repaid the sum due to the bank on its security, and on the 22nd May took a transfer of such security. Being dissatisfied with her son-in-law, she wished to give her daughter the defendant, Vera Sole, possession of the premises, Wallace Sole having agreed in writing on the 21st May to leave them. No notice of such agreement was given to Spencer. On the 23rd May he received a communication from Mrs. Mason's solicitors giving the partnership notice to quit the premises. From the 26th May he was excluded from the premises. On the 27th May the leases were assigned to Mrs. Mason. The plaintiff claimed damages and an injunction.

LORD RUSSELL OF KILLOWEN, giving judgment, said that after the security was transferred to her, Mrs. Mason replaced the bank as equitable mortgagee with a right to a legal mortgage, and entitled to disregard any tenancy created since the mortgage. When she took possession on the 26th May she had the mortgagor's consent. The plaintiff, whose title, derived from the mortgagor, was subsequent to the mortgage, had no right against her. It has never been held inequitable for an equitable mortgagee to take possession as against a person whose title is subsequent to his security. There should be no order as to costs. In acting behind the plaintiff's back, Mrs. Mason was largely to blame for the litigation and the charge of fraud raised on the pleadings. Against Wallace Sole, dissolution of the partnership was asked. This should be granted with the costs of that issue.

COUNSEL: *Archer*, K.C., and *H. S. G. Buckmaster*; *Sir G. Hurst*, K.C., *G. D. Johnson* and *F. Baden Fuller*.

SOLICITORS: *Rubinstein, Nash & Co.*; *Fladgate & Co.*; *Robinson and Bradley*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

In re Price (deceased).

Langton, J. 16th March.

PROBATE—ACTION PROPOUNDING WILL COMPRISING MINORITY AND LIFE INTEREST—APPLICATION FOR APPOINTMENT OF ADMINISTRATOR *pendente lite*—GRANT TO SOLE ADMINISTRATOR—JUDICATURE (CONSOLIDATION) ACT, 1925 (15 & 16 Geo. 5, c. 49), ss. 160, 163.

The plaintiffs in this probate action to determine the validity of a will containing, *inter alia*, a life and a minority interest, successfully applied on motion on 9th February for the appointment of an administrator *pendente lite* under s. 163 of the Judicature Act, 1925. In the Registry before extraction of the grant the Registrar raised the point as to whether, in view of the minority or life interest, there must not be two administrators in pursuance of s. 160 of the Act. On 16th March the motion was restored asking for the appointment of two administrators, or, in the alternative, for a declaration that the sole administrator already appointed was sufficient. In support of the alternative application counsel submitted that the matter was governed solely by s. 163, which dealt specifically with administration *pendente lite*, and made no change in the old-established practice of appointing a sole administrator. It was true that s. 160 provided that if there was a minority or life interest arising under a will or on intestacy the grant must be made either to a trust corporation or to not less than two individuals, but that was a general power as distinct from

the limited power asked for here. In *In re Herbert (deceased)* [1926] P. 109, an application for a grant *ad colligenda* on behalf of a creditor, the court had made a full grant to a sole administrator in spite of the existence of a minority interest, s. 160 being held to be subject to the modification in s. 162 (1) (*a*) empowering the court in the event of insolvency to make a discretionary grant to some person other than those interested in the residue. The present case was not governed by judicial authority.

LANGTON, J., in giving judgment accepting the argument of counsel, said that s. 163 was not controlled by s. 160. The form of order *pendente lite* amply protected minority and life interests. The declaration asked for by the plaintiffs would be made as prayed with costs out of the estate in any event.

COUNSEL: *J. S. Watts.*

SOLICITORS: *Daphnes*, for *Bartley, Cock & Bird*, Liverpool.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Societies.

Gray's Inn.

At Gray's Inn the Arden Scholarship of 1931 (£150 a year for three years) has been awarded to Mr. John Waddingham Brunyate, Fellow of Trinity College, Cambridge, a student of the society. A special prize of 100 guineas has been awarded to Mr. Hugh Elvet Francis, of St. John's College, Cambridge, a student of the society.

United Law Clerks' Society.

NINETY-NINTH ANNIVERSARY FESTIVAL.

The annual dinner of the United Law Clerks' Society is to be held at the Connaught Rooms, on Tuesday, 12th May, and it is asked that donations may be sent to the Secretary of the Society, at 2, Stone-buildings, Lincoln's Inn, W.C.2. The Lord Mayor has promised to attend, and Sir Roger Gregory, the President of The Law Society, will take the chair. We hope that there may be a generous response to the appeal for this most excellent society.

Law Students' Debating Society.

At a meeting of the Society held at The Law Society's Hall on Tuesday, 14th April (Chairman, Mr. J. C. Christian-Edwards), the subject for debate was: "That this house deplores the recent speeches of Mr. Winston Churchill on India." Mr. R. D. C. Graham opened in the affirmative. Mr. I. C. Baillieu opened in the negative. The following members also spoke: Messrs. C. F. S. Spurrell, H. J. Baxter, C. W. S. Rees, E. M. Woolf, W. M. Pleadwell, K. D. C. Nation-Dixon, L. J. Frost, B. T. Ford and C. Israel. The opener having replied, and the Chairman having summed up, the motion was carried by five votes.

At a further meeting held on Tuesday, 21st April, (Chairman, Mr. A. L. Ungoed-Thomas), the subject for debate was: "That the case of *Inverclyde* (*otherwise Tripp*) v. *Inverclyde* [1931] P. 29; 144 L.T.R. 212, was wrongly decided." Mr. C. W. S. Rees opened in the affirmative. Mr. J. T. Molony opened in the negative. Mr. J. W. Notcutt seconded in the affirmative. Mr. B. T. Ford seconded in the negative. The following members also spoke: Messrs. W. M. Pleadwell, J. C. Christian-Edwards, E. M. Woolf, N. F. Burge, H. J. Baxter, D. E. Roberton, H. F. C. Morgan, L. J. Frost and C. D. Griffiths. The opener having replied, and the Chairman having summed up, the motion was lost by four votes. There were twenty-one members and two visitors present.

At a meeting of the Society, held at The Law Society's Hall, on Tuesday, 28th day of April, 1931 (Chairman Mr. H. J. Baxter), the subject for debate was: "That this House disapproves of any attempt to curtail the freedom of testamentary disposition." Mr. M. Barry O'Brien opened in the affirmative. Mr. L. F. Tucker opened in the negative.

The following also spoke: Messrs. E. M. Woolf, R. S. W. Pollard, M. C. Batten, E. A. Bell, W. M. Pleadwell, Baden-Fuller, L. J. Frost, C. F. S. Spurrell, Miss Cameron, Mr. A. L. Ungoed-Thomas, Miss Stannard, Messrs. I. T. Smith, L.F. Biden, B. T. Ford and L. C. Masterman.

The opener having replied, the motion was put and lost by one vote.

There were twenty members and two visitors present.

Parliamentary News.

Progress of Bills.

House of Lords.

Agricultural Land (Utilisation) Bill.
Committee Stage concluded. [23rd April.
Pharmacy and Poisons Bill [H.L.].
Report. [28th April.

House of Commons.

Agricultural Marketing Bill.
In Committee. [29th April.
Architects (Registration) Bill.
As amended in the Standing Committee, Read the Third Time and passed. [17th April.
Criminal Justice (Amendment) Bill.
Read the First time. [28th April.
Employment Returns Bill.
Read a Second Time. [17th April.
Housing (Rural Workers) Amendment Bill.
Read a Second Time. [21st April.
Local Authorities (Publicity) Bill.
Reported with Amendments. [22nd April.
London Passenger Transport Bill.
Referred to Select Committee. [27th March.
National Industrial Council Bill.
Second Reading deferred till Friday, 8th May. [30th April.
Petroleum Bill.
Read the First Time. [22nd April.
Pharmacy and Poisons Bill.
In Committee. [26th March.
Representation of the People (No. 2) Bill.
In Committee. [23rd April.
Rural Amenities Bill.
Withdrawn. [14th April.
Shops (Sunday Trading Restriction) Bill.
Read the First Time. [29th March.
Summary Jurisdiction (Appeals) Bill.
Read a Second Time and committed. [24th April.
Sunday Performances (Regulation) Bill.
Read a Second Time. [20th April.
The Marriage (Prohibited Degrees of Relationship) Bill.
Committee stage concluded [29th April.
Town and Country Planning Bill.
Read a Second Time. [15th April.
Vaccination Bill.
Read the First Time. [29th March.
Widows, Orphans, and Old Age Contributory Pensions Bill.
Read a Second Time. [21st April.
Wills and Intestacies (Family Maintenance) Bill.
Committee stage concluded. [29th April.
Workmen's Compensation Bill.
As amended (in the Standing Committee) considered: Read the Third Time and passed. [24th April.
Works Council Bill.
Second Reading deferred till Friday, 8th May. [30th April.
Sharing Out Clubs (Regulation) Bill.
Read a Second Time. [24th April.

Questions to Ministers.

CONTRIBUTORY PENSIONS ACT.

Replying to Major WOOD, Mr. GREENWOOD said: "There is no intention at present of publishing a further précis of decisions on appeals under s. 29 of the Contributory Pensions Act, but the matter may be reconsidered when a sufficient number of decisions involving new points has been accumulated. Any inquiry regarding the publication of decisions given by the referees in Scotland should be addressed to the Secretary of State for Scotland." [24th April.

LOCAL GOVERNMENT ELECTIONS (POLLING HOURS).

Mr. MARLEY asked the Home Secretary whether it is his intention to amend the law relating to polling hours in municipal and local elections to permit the same optional extension as exists in Parliamentary elections.

Mr. CLYNES: I am afraid that I cannot at present give any promise to bring in a Bill, but the matter will certainly be very carefully considered when an opportunity for legislation occurs. [29th April.

LAW OFFICERS (SALARIES AND FEES).

Mr. D. G. SOMERVILLE asked the Prime Minister if he will consider, in the interests of public economy, fixing the remuneration of his legal advisers on the scale applicable to ordinary Ministers of the Crown.

The PRIME MINISTER (Mr. Ramsay MacDonald): The hon. Member will remember that this question was carefully considered by the Select Committees on Minister's Remuneration which reported in 1920 and 1930. The former suggested a slight reduction, but the Government of the time took no action, and the latter made no recommendation. I understand, however, that before the end of the last financial year the Law Officers themselves made a proposal to the Chancellor of the Exchequer for a reduction of their emoluments, and that this proposal is under consideration. [27th April.

Legal Notes and News.

Honours and Appointments.

The Office-bearers of The Scots Law Society for the Session 1931-32 have been appointed as follows: Presidents, Messrs. W. GEORGE PURVES, W.S., ALLAN G. WALKER, and G. D. CHEYNE; Secretary, Mr. E. T. STEVENS, W.S.; Treasurer, Mr. L. E. EUNSON; and Assistant Secretary, Mr. R. W. TAYLOR.

Mr. JOHN MACGREGOR, W.S., Edinburgh, has been appointed Clerk and Agent for the Admission of Notaries in succession to the late Mr. W. G. L. Winchester, W.S.

The Secretary of State for Scotland has appointed Mr. J. M. VALLANCE, W.S. (Solicitor to the Department of Health for Scotland) to be an Assistant Secretary of the Department in place of Mr. H. L. F. Fraser, resigned; and Mr. G. A. BIRSE, M.A., B.L., to be the Solicitor to the Department in place of Mr. Vallance.

The Secretary of State for Scotland has appointed Mr. G. A. J. LEE, W.S., Keeper of the Registers and Records of Scotland, to be Deputy Keeper of the Seal appointed by the Treaty of Union to be kept and made use of in Scotland in place of the Great Seal of Scotland.

Mr. DUNCAN LEE, at present Second Clerk in the Crown Office, Edinburgh, has been appointed to succeed Mr. James K. Young, I.S.O., Chief Clerk in that department, who has retired on reaching the age limit.

Mr. W. J. ROBERTSON, Procurator-Fiscal, Kilmarnock, will succeed Mr. T. Maclennan in the office of Procurator-Fiscal of Aberdeen on the 20th May.

Mr. CHARLES JAMES LORIMER ROMANES, W.S., has been appointed Clerk of the Peace for the County of Berwick, in place of Mr. Alexander Nisbet M'Dougal, deceased.

Professional Partnerships Dissolved.

EDWARD WILLIAM HORNBY BIRLEY, HENRY BARRY CARLISLE, and SYDNEY HARCOURT JOHNSON, solicitors, 20, St. Ann's-square, Manchester (Carlisle, Birley and Carlisle), dissolved by mutual consent as and from 31st March, 1931. H. B. Carlisle and S. H. Johnson will continue the business under the style or firm of Carlisle, Birley and Carlisle at the same address.

RICHARD WALTER RYLANDS, THOMAS FRANCIS HEYWORTH, JOHN HARDY LAWTON, and JOSEPH ARTHUR SYKES, solicitors, 20, Booth-street, Manchester (Boote, Edgar and Rylands), dissolved by mutual consent as and from 31st March, 1931, so far as concerns R. W. Rylands, who retires from the firm. The remaining partners will continue to carry on the practice at the same address and under the same style.

INNER TEMPLE GUEST NIGHTS.

Thursday, 7th May, has been fixed for the holding of the first of the barristers' guest nights which the Benchers of the Inner Temple have decided to introduce as an experiment. Except on grand nights, when the Benchers have their own guests, dining-in-hall is normally strictly confined to barristers and students.

If the experiment proves a success it is proposed to have a barristers' guest night on one day in each term.

At present the number of guests is limited to twelve, and they must not be either solicitors, students, or under twenty-one years of age. It is also a condition that the guest must be of the same sex as the host, so that a male barrister may not entertain a lady friend, nor *vice versa*. Further, the guest must sit at the same table as the invitor.

SUPREME COURT PRIZE FUND.

While the total received on behalf of the Supreme Court Prize Fund since the outbreak of the war to March 31st, 1930, was, says *The Times*, £20,900,547, only £5,886 of that total was received during the year which ended on that date, according to a Treasury return issued recently. This has led the Treasury to point out to the Supreme Court of Judicature that the prize accounts were now practically finished, only two matters being outstanding, and that the preparation and presentation of a yearly account was no longer justifiable. They therefore proposed to discontinue the practice. The Accounting Officer of the Supreme Court of Judicature has concurred in the adoption of this course.

LITERARY "TRIALS."

Various well-known figures in the domain of literature and in public life have consented, in the interests of King Edward's Hospital Fund, to undergo the ordeal of prosecution for certain offences alleged to have been committed by them in their public capacity.

The "trials" will be held at the London School of Economics on Tuesdays at 5.30 p.m. during May and June, beginning on 5th May, with the indictment of Mr. St. John Ervine on a charge of "being unduly critical." Lady Rhondda will appear for the prosecution, and the case will be tried by Mr. Theobald Mathew, barrister-at-law, and son of the late Mr. Justice Mathew. Witnesses are to be "subpœnaed" by the defence and by the prosecution.

Following the "trial" of Mr. St. John Ervine, appropriate charges will be brought against Father Ronald Knox, Miss Megan Lloyd George, Captain Gilbert Frankau, and Canon Hannay (George A. Birmingham), the prosecutions being in the hands of Miss Dorothy L. Sayers, Mr. Philip Guedalla, Miss Pauline Frankau, and the Rev. C. A. Alington, D.D. (headmaster of Eton College), respectively. In each case some eminent member of the Bar will take the part of judge.

The "indictments" are being arranged by a special committee of King Edward's Hospital Fund for London, under the chairmanship of Sir Nigel Playfair, and the proceeds will be given to the fund. Full particulars can be obtained of the Secretary, 7, Walbrook, E.C.4.

LIABILITY FOR THEFT FROM HIRED MOTOR-LORRY.

The Hon. S. O. Henn-Collins presided at the Moot held in the Middle Temple Hall recently, the other Benchers present being: Judge Sir Alfred Tobin, K.C. (Treasurer), Sir Robert McCall, K.C., Mr. Justice Horridge, Mr. Justice McCardie, Mr. Heber Hart, K.C., Mr. H. Dumas, Mr. Stuart Bevan, K.C., Mr. J. G. Hurst, K.C., Mr. J. D. Cassels, K.C., and Mr. J. M. Paterson.

Mr. H. I. Willis, the Convener, read the case on appeal as follows:—

The defendant, a motor haulier, not being a common carrier, agreed with the plaintiff, a furniture dealer, in the terms of the following letter: "My driver will have a lorry outside your premises at 6.30 p.m. on Tuesday next, you to load the goods on it. When loaded, my driver will take the lorry to my garage for the night, and proceed to Peterborough the following morning. You must make your own arrangements for unloading it there. My price for the above is £15."

The driver duly arrived at 6.30 p.m. and the plaintiff's men began loading it. While they were doing so the lorry driver removed the float from the carburetter and informed the plaintiff's foreman that he had done so, so as to prevent the lorry being moved while he went to get a bit of supper, and that he would be back by 9.30 p.m.

The loading was completed before 9.30 p.m., and the plaintiff's men waited until 10 p.m. for the driver to return and then went home, leaving the loaded lorry where it was in the street. The defendant's driver never returned, and before morning the contents of the lorry were stolen.

The plaintiff sued for the value of the goods as damages for breach of contract, or, alternatively, as damages for negligence, and recovered judgment.

The defendant appeals.

There appeared for the appellants Mr. G. E. Llewellyn Thomas and Mr. G. Avgherinos; for the respondents Mr. R. Jardine Brown and Mr. A. McDougall.

Mr. Henn-Collins, in delivering his decision, said that it was conceded that there was a breach of contract by the defendant's men not taking charge of the lorry, at any rate from the time that it was loaded. The real question, whether looked at in tort or contract, was whether the plaintiff's men acted reasonably in doing what they did between 9.30 and 10 p.m., and then going away. He held that in all the circumstances their action was not unreasonable. Therefore, there was no answer to the defendant's breach of contract, and the appeal failed.

SIGNING A PASSPORT APPLICATION.

The jury at the London Sessions on Tuesday last stopped the case in which Mr. Geoffrey C. Rimington Taylor, Solicitor, of Devereux Court, Strand, W.C., committed for trial from the Westminster Police Court, was charged with knowingly making a false statement in recommending as fit and proper to receive a passport, and the defendant was discharged.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE	EMERGENCY ROTA.	APPEAL COURT No. 1.	MR. JUSTICE EVE. Non-Witness.	MR. JUSTICE MAUGHAM. Witness Part II.
M'nd'y May 4	Mr. Ritchie	Mr. Hicks Beach	Mr. Jolly	Mr.*Blaker
Tuesday .. 5	Andrews	Blaker	Ritchie	*Jolly
Wednesday 6	Jolly	More	Blaker	*Ritchie
Thursday . 7	Hicks Beach	Ritchie	Jolly	Blaker
Friday 8	Blaker	Andrews	Ritchie	Jolly
Saturday .. 9	More	Jolly	Blaker	Ritchie

DATE	MR. JUSTICE BENNETT. Witness Part I.	MR. JUSTICE CLAUSON. Witness Part II.	MR. JUSTICE LUXMOORE. Witness Part I.	MR. JUSTICE FARWELL. Non-Witness.
M'nd'y May 4	Mr.*Ritchie	Mr.*Andrews	Mr. Hicks Beach	Mr. More
Tuesday .. 5	Blaker	*More	*Andrews	Hicks Beach
Wednesday 6	*Jolly	*Hicks Beach	More	Andrews
Thursday . 7	Ritchie	Andrews	*Hicks Beach	More
Friday 8	*Blaker	*More	Andrews	Hicks Beach
Saturday .. 9	Jolly	Hicks Beach	More	Andrews

*The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.

The WHITSUN VACATION will commence on Saturday, the 23rd day of May, 1931, and terminate on Tuesday, the 26th day of May, 1931, inclusive.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (1st May 1930) 3%. Next London Stock Exchange Settlement Thursday, 7th May, 1931.

	Middle Price 29 April 1931.	Flat Interest Yield.	Approximate Yield with redemption
English Government Securities.		£ s. d.	£ s. d.
Consols 4% 1957 or after	92½	4 6 6	—
Consols 2½%	58½	4 5 6	—
War Loan 5% 1929-47	102¾xd	4 17 4	—
War Loan 4½% 1925-45	100½xd	4 9 7	4 9 0
Funding 4% Loan 1960-90	94	4 5 1	4 5 6
Victory 4% Loan (Available for Estate Duty at par) Average life 35 years	96½	4 2 11	4 4 0
Conversion 5% Loan 1944-64	105	4 15 3	4 14 6
Conversion 4½% Loan 1940-44	102½	4 7 10	4 5 6
Conversion 3½% Loan 1961	81½	4 5 11	—
Local Loans 3% Stock 1912 or after	67½	4 8 11	—
Bank Stock	263½	4 11 1	—
India 4½% 1950-55	80½	5 11 10	6 0 6
India 3½%	60½	5 15 8	—
India 3%	50½	5 18 10	—
Sudan 4½% 1939-73	100	4 10 0	4 11 0
Sudan 4% 1974	90	4 8 11	4 12 0
Transvaal Government 3% 1923-53 (Guaranteed by Brit. Govt. Estimated life 15 yrs.)	86½	3 9 4	3 18 0
Colonial Securities.			
Canada 3% 1938	92	3 5 3	4 8 6
Cape of Good Hope 4% 1916-36	96	4 3 4	4 16 0
Cape of Good Hope 3½% 1929-49	84	4 3 4	4 16 6
Ceylon 5% 1960-70	103	4 17 1	4 16 6
*Commonwealth of Australia 5% 1945-75	70	7 2 10	7 3 11
Gold Coast 4½% 1956	99	4 10 11	4 11 4
Jamaica 4½% 1941-71	98	4 11 10	4 12 3
Natal 4% 1937	96	4 3 4	4 18 0
*New South Wales 4½% 1935-1945	50	9 0 0	9 15 0
*New South Wales 5% 1945-65	60	8 6 8	8 10 7
New Zealand 4½% 1945	92½	4 17 4	5 4 6
New Zealand 5% 1946	98½	5 1 6	5 1 3
Nigeria 5% 1950-60	104	4 16 2	4 14 2
*Queensland 5% 1940-60	62	8 1 4	8 8 3
South Africa 5% 1945-75	102½	4 17 7	4 17 5
*South Australia 5% 1945-75	70	7 2 10	7 14 6
*Tasmania 5% 1945-75	73	6 17 0	7 1 6
*Victoria 5% 1945-75	67	7 9 3	8 0 0
*West Australia 5% 1945-75	73	6 17 0	7 1 6
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corporation	66	4 10 11	—
Birmingham 5% 1946-56	104	4 16 2	4 16 6
Cardiff 5% 1945-65	103	4 17 1	4 15 9
Croydon 3% 1940-60	75	4 0 0	4 11 0
Hastings 5% 1947-67	102	4 18 0	4 17 6
Hull 3½% 1925-55	83	4 4 4	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	76	4 12 1	—
London City 2½% Consolidated Stock after 1920 at option of Corporation	57	4 7 9	—
London City 3% Consolidated Stock after 1920 at option of Corporation	67	4 9 7	—
Metropolitan Water Board 3% "A" 1963-2003	66	4 9 7	—
Do. do. 3% "B" 1934-2003	68	4 8 3	—
Middlesex C.C. 3½% 1927-47	86	4 1 5	4 14 6
Newcastle 3½% Irredeemable	76	4 12 1	—
Nottingham 3% Irredeemable	65	4 12 4	—
Stockton 5% 1946-66	103	4 17 1	4 16 6
Wolverhampton 5% 1946-56	103	4 17 1	4 14 10
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	83½	4 15 10	—
Gt. Western Railway 5% Rent Charge	100½	4 19 6	—
Gt. Western Rly. 5% Preference	88	5 13 8	—
L. & N.E. Rly. 4% Debenture	75	5 6 8	—
L. & N.E. Rly. 4% 1st Guaranteed	67	5 19 5	—
L. & N.E. Rly. 4% 1st Preference	49	8 3 2	—
L. Mid. & Scot. Rly. 4% Debenture	77	5 3 11	—
L. Mid. & Scot. Rly. 4% Guaranteed	68	5 17 8	—
L. Mid. & Scot. Rly. 4% Preference	49	8 3 2	—
Southern Railway 4% Debenture	81	4 18 9	—
Southern Railway 5% Guaranteed	97½	5 2 7	—
Southern Railway 5% Preference	83½	5 19 9	—

*The prices of Australian stocks are nominal—dealings being now usually a matter of negotiation.